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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 GEN ADS, LLC, a Washington limited
12 liability company; CARTMELL
13 HOLDINGS, LLC, a Washington
14 limited liability company; and
15 HILLSTROM EQUITIES, LLC, a
16 Minnesota limited liability company,

17 Plaintiffs,

18 v.

19 ANDREW BREITBART, an individual;
20 SUSANNAH BEAN BREITBART, an
21 individual; the BREITBART marital
22 community, a California marital
23 community comprised of ANDREW
24 AND SUSANNAH BEAN
25 BREITBART; BREITBART.COM,
26 LLC, a California limited liability
27 company; and BREITBART
28 HOLDINGS, INC. (f/k/a
BREITBART.COM, INC.), a California
corporation,

Defendants.

CASE NO.

COMPLAINT

24 Plaintiffs GEN ADS, LLC, CARTMELL HOLDINGS, LLC, and
25 HILLSTROM EQUITIES, LLC, file this Complaint against defendants
26 ANDREW BREITBART, SUSANNAH BEAN BREITBART, the BREITBART
27 marital community, BREITBART.COM, LLC, and BREITBART HOLDINGS,
28 INC., on personal knowledge as to their own activities, and on information

and belief as to the activities of others, as follows:

I. THE PARTIES

1. Plaintiff GEN ADS, LLC (“Gen Ads”) is a Washington limited liability company with its principal place of business in Seattle, Washington.

2. Plaintiff CARTMELL HOLDINGS, LLC (“Cartmell Holdings”) is a Washington limited liability company with its principal place of business in Seattle, Washington, and is a Member of Gen Ads.

3. Plaintiff HILLSTROM EQUITIES, LLC (“Hillstrom Equities”) is a Minnesota limited liability company with its principal place of business in Minneapolis, Minnesota, and is a Member and Manager of Gen Ads.

4. Gen Ads, Cartmell Holdings, and Hillstrom Equities are referred to collectively herein as “Plaintiffs”; and each individually is referred to as a “Plaintiff”.

5. Defendant ANDREW BREITBART (“Andrew”) is an individual residing in Los Angeles, California.

6. Defendant SUSANNAH BEAN BREITBART (“Mrs. Breitbart”) is an individual residing in Los Angeles, California.

7. The BREITBART marital community is a California marital community comprised of Andrew Breitbart and Susannah Bean Breitbart. All of the actions Andrew Breitbart took as alleged herein were undertaken on behalf of himself, Mrs. Breitbart, and the marital community comprised thereof. Accordingly, each of Andrew Breitbart, Mrs. Breitbart and the martial community are liable for the damages Gen Ads suffered arising out of Andrew Breitbart’s activities.

8. Defendant BREITBART.COM, LLC (“BL”) is a California limited liability company with its principal place of business in Los Angeles County, California.

9. Defendant BREITBART HOLDINGS, INC. (“BHI”) is a California

1 corporation with its principal place of business in Los Angeles County,
2 California. However, during most of the period relevant to the facts alleged
3 herein, BHI was a California corporation named BREITBART.COM, INC. On
4 December 30, 2005, Defendant Andrew Breitbart caused a Certificate of
5 Amendment to be filed with the California Secretary of State, which effected
6 an amendment to BHI's articles of incorporation renaming the corporation
7 Breitbart Holdings, Inc.

8 10. Defendant Andrew Breitbart controls defendants BL and BHI.

9 11. Collectively, Andrew Breitbart, Mrs. Breitbart, the Breitbart
10 marital community, BHI, and BL, are referred to herein as "Defendants"; and
11 each individually is referred to as a "Defendant".

12 12. Each Defendant aided and abetted the actions of the other
13 Defendants as set forth below, in that each Defendant had knowledge of those
14 actions, provided assistance and benefitted from those actions. Each of the
15 Defendants was the agent of each of the remaining Defendants, and in doing
16 the things hereinafter alleged, was acting within the course and scope of such
17 agency and with the permission and consent of the other Defendants.

18 II. JURISDICTION AND VENUE

19 13. This is a civil action seeking damages for breach of contract,
20 breach of the covenant of good faith and fair dealing, breach of fiduciary duty,
21 fraud, copyright infringement, and declaratory relief.

22 14. This Court has jurisdiction over the subject matter of this action
23 pursuant to 17 U.S.C. § 101 *et seq.* (copyright); 28 U.S.C. § 1331 (federal
24 question); and 28 U.S.C. § 1338(a) (copyright). In addition, this Court has
25 subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties
26 are citizens of different states and the amount in controversy exceeds
27 \$75,000. This Court has supplemental jurisdiction over the state law claims
28 pursuant to 28 U.S.C. § 1367.

1 19. At the time the parties signed the LLC Agreement, Andrew
2 owned Breitbart.com, Inc., a California corporation.

3 20. A couple of months after the parties signed the LLC Agreement,
4 Andrew caused the filing of a Certificate of Amendment effecting the articles
5 of incorporation for Breitbart.com, Inc. to reflect the name of that corporation
6 as Breitbart Holdings, Inc.

7 21. Because Breitbart Holdings, Inc. did not exist at the time the
8 parties formed Gen Ads and signed the LLC Agreement, Breitbart Holdings,
9 Inc. could not be a member of Gen Ads.

10 22. Consequently, Defendants Andrew Breitbart, Mrs. Breitbart, and
11 the Breitbart martial community are together, personally and individually, a
12 member of Gen Ads.

13 23. Andrew is associated with Matt Drudge's news web site *the*
14 *Drudge Report*, located on the Internet at <<www.drudgereport.com>>, which
15 reportedly receives more than 3 million unique visitors a month and
16 generates more than \$1 million in advertising revenue annually.

17 24. In particular, Andrew controls certain content that appears on
18 <<drudgereport.com>>, as a consequence of which he has the ability to direct
19 traffic (*i.e.*, Internet end users) from <<drudgereport.com>> to other web sites
20 (*i.e.*, by inserting hyperlinks that end users click to be redirected to another
21 web site).

22 25. Defendant BL, which Andrew controls, owns and operates the
23 Internet web site <http://www.breitbart.com> (the "Breitbart Site"). The
24 Breitbart Site was launched August 17, 2005, and almost immediately
25 became one of the most trafficked sites on the Internet, with a reported 2.64
26 million visits in its first month of operation.

27 26. Nearly all of the traffic on the Breitbart Site originated on
28 <<drudgereport.com>> because Andrew caused the traffic to be diverted from

1 <<drudgereport.com>> to the Breitbart Site.

2 27. Gen Ads was formed to, among other things, generate revenue
3 from the significant traffic at the Breitbart Site.

4 28. Pursuant to Section 3.2 of the LLC Agreement, Gen Ads is
5 managed by Managers. A true and correct copy of the LLC Agreement is
6 attached hereto as **Exhibit A**.

7 29. The Managers of Gen Ads are purportedly Global DNS, LLC (as
8 general manager), Hillstrom Equities, LLC and Breitbart Holdings, Inc.

9 30. The LLC Agreement provides Gen Ads the exclusive right to sell
10 advertising on any web site operated by a Member. In particular, section 13.2
11 of the LLC Agreement provides,

12 The Members hereby acknowledge that each Member has various
13 "Affiliates" (defined below) which own and operate various Web
14 properties (the "Affiliate Properties"). The Members hereby
15 acknowledge and agree that if any Affiliate Property desires to offer
16 third parties a right to publish on an Affiliate Property any material
17 that promotes a brand or a product or a service of such third party
18 through advertising banners, text links, buttons, jump pages and
similar promotional devices as well as all elements of a sponsorship
or promotion ("Advertising"), the Company shall have the right to
exclusively manage and supervise the sale of Advertising on the
applicable Affiliate Property in accordance with the agreement set
forth in Exhibit C attached hereto (the "Service Agreement").

19 31. Defendant BL is an "Affiliate" of BHI as that term is defined in
20 section 1.2 of the LLC Agreement.

21 32. The Breitbart Site is an "Affiliate Property" as defined by the
22 LLC Agreement.

23 33. On November 11, 2005, Gen Ads and BL entered into an
24 Exclusive Advertising Services Agreement in relation to the Breitbart Site
25 (the "Advertising Agreement"). A true and correct copy of the Advertising
26 Agreement is attached hereto as **Exhibit B**.

27 34. The Advertising Agreement grants Gen Ads the exclusive right to
28 sell advertising on the Breitbart Site. Specifically, section 2 of the Agreement

1 provides:

2 [BL] hereby grants to GENADS the worldwide exclusive right to sell
3 all Advertising on the [Breitbart] Site(s) at prices and terms solely
4 determined by GENADS during the term of this Agreement.
5 Accordingly, under no circumstances shall [BL] retain a third party
6 to solicit Advertisers for the [Breitbart] Sites (other than GENADS).
7 Further, [BL] shall not solicit to the exclusion of GENADS any
8 Advertisers unless approved in writing by GENADS. Exclusivity
9 under this Section 2 shall be subject to the terms of Section 5 of this
10 Agreement, and conditioned on [BL] receiving the Minimum Royalty
11 Payment pursuant to Section 6.3 of this Agreement.

35. Section 3 of the Advertising Agreement similarly provides:

8 [BL] represents, warrants, covenants and agrees: (e) not to engage,
9 contract with, license or permit any person, firm or entity (including
10 [BL] and its employees) other than GENADS and its employees to
11 sell, or represent [BL] for the sale of Advertising on the [Breitbart]
12 Site and to refer all advertising inquiries to GENADS.

36. BL is obligated by the Advertising Agreement to insert on the
13 Breitbart Site HTML or other code provided by Gen Ads to enable Gen Ads to
14 place advertisements on the Breitbart Site.

37. In November 2005, Gen Ads learned that BL had entered into an
15 advertising agreement with Reuters, a third party, for the placement of
16 multiple links on the Breitbart Site to promote the Reuters site (the "Reuters
17 Advertising").

38. Indeed, Andrew was negotiating the agreement to place Reuters
19 Advertising at the time he was negotiating the Advertising Agreement and
20 LLC Agreement with Gen Ads, Cartmell Holdings, and Hillstrom Equities.

39. Andrew represented at the time he entered the Advertising
22 Agreement on behalf of BL, and the LLC Agreement, that he was not
23 negotiating with any third parties, but rather was only negotiating with Gen
24 Ads and its principals for an advertising deal.

40. Andrew omitted from his representations about exclusivity with
26 Gen Ads that he was negotiating with Reuters.

41. Pursuant to the agreement with Reuters, BL has included on the

1 Breitbart Site eighteen (18) pages devoted to promoting the Reuters news
2 service, with each such promotional page including news story teasers.

3 42. End users (*i.e.*, consumers) cannot view the news stories
4 referenced by said Reuters Advertising teasers without clicking on a link, at
5 which time the end user is directed to the Reuters web site and away from the
6 Breitbart Site. Each story also has a text link to Reuters. Additionally, the
7 top of each page has a graphical link to Reuters.

8 43. BL collects a fee in consideration for placing the Reuters
9 Advertising on the Breitbart Site.

10 44. As a result of end users being redirected from the Breitbart Site
11 to the Reuters site, the value of advertising Gen Ads sells on the Breitbart
12 Site is reduced dramatically.

13 45. The Advertising Agreement defines "Advertising" as "the
14 material that promotes a product or a brand or a service through advertising
15 banners, text links, buttons, jump pages and similar promotional devices as
16 well as all elements of a sponsorship or promotion."

17 46. The Reuters Advertising is "Advertising" as defined in the
18 Advertising Agreement.

19 47. The Advertising Agreement provides that Gen Ads is responsible
20 for collecting revenue generated by Advertising on the Breitbart Site, and
21 requires BL to make prompt payment to Gen Ads of any payment for
22 Advertising that is paid directly to BL rather than to Gen Ads.

23 48. On November 30, 2005, Gen Ads notified BL that the Reuters
24 Advertising constitutes "Advertising" under the Advertising Agreement, and
25 demanded that BL make payment to Gen Ads of any revenue received by BL
26 from Reuters in connection with the Reuters Advertising.

27 49. BL refused, and continues to refuse, to account to Gen Ads for the
28 revenues it has received and continues to receive from Reuters.

1 50. Section 4(e) of the Advertising Agreement gives BL the right to
2 consent or withhold consent as to the content of the advertisements delivered
3 to the Breitbart Site.

4 51. At the time the parties entered into the Advertising Agreement,
5 neither BL nor Gen Ads understood section 4(e) of the Advertising Agreement
6 to require Gen Ads to present advertisements to BL for approval prior to
7 placing such advertisements on the Breitbart Site. Rather, the mutual
8 understanding of Gen Ads and BL was that Gen Ads would place
9 advertisements on the Breitbart Site, and BL would instruct Gen Ads to
10 remove any advertisements to which it objected.

11 52. Prior to Gen Ads's demand that BL account for the revenue
12 received for the Reuters Advertising, BL and Gen Ads acted in a manner
13 consistent with this understanding: BL instructed Gen Ads to remove certain
14 advertisements from the Breitbart Site after those advertisements had
15 appeared on the Breitbart Site, and never asked to review any
16 advertisements before Gen Ads placed them on the Breitbart Site.

17 53. Defendant Andrew induced Gen Ads to enter the Advertising
18 Agreement by representing that (1) Andrew would continue to cause traffic to
19 be directed from <<drudgereport.com>> to the Breitbart Site to the greatest
20 extent possible; (2) Andrew would not, for consideration, cause traffic to be
21 directed from <<drudgereport.com>> to any site other than the Breitbart
22 Site; and (3) GenAds would have the ability to sell at least five (5) advertising
23 locations on the Breitbart Site.

24 54. Since November 2005, or earlier, Andrew has caused traffic to be
25 directed from <<drudgereport.com>> to Reuters. The hyperlinks to Reuters
26 on <<drudgereport.com>> include the same tracking code as the hyperlinks to
27 Reuters on the Breitbart Site. Accordingly, Andrew (directly or through one of
28 the other defendants) is receiving consideration from Reuters for the

1 advertising on <<drudgereport.com>>.

2 55. On December 23, 2005, BL (through its counsel) informed Gen
3 Ads that it would make available to Gen Ads only two (2) advertising
4 locations on the Breitbart Site, and demanded that Gen Ads comply with a
5 laundry list of unreasonable requirements to which Gen Ads had never
6 agreed.

7 56. In particular, BL demanded that Gen Ads provide all
8 advertisements to BL for its approval ten days prior to placing such
9 advertisements on the Breitbart Site; that advertisements provided by Gen
10 Ads not include video or audio, or include popovers or popunders, or be
11 duplicated on a single web page, or consist solely or primarily of text; that
12 “run of network” advertisements (*i.e.*, advertisements that Gen Ads places on
13 additional sites for which it sells advertising space) appear in no more than
14 one advertising location on the Breitbart Site; and that Gen Ads provide
15 weekly statements signed “under penalty of perjury” certifying compliance
16 with BL’s restrictions.

17 57. BL’s unilateral demands are both unreasonable and inconsistent
18 with standard industry practice and the Advertising Agreement.

19 58. When Gen Ads advised BL that it lacked authority to impose such
20 requirements, BL asserted that Gen Ads would be in breach of the
21 Advertising Agreement if it did not comply with BL’s extracontractual
22 demands.

23 59. Gen Ads is, and at all relevant times has been, the copyright
24 owner under United States copyright law with respect to certain software
25 code entitled NEWSFEED CODE (the “Original Code”), which it uses to place
26 advertisements dynamically on a Gen Ads client site, such as the Breitbart
27 Site.

28 60. Gen Ads is informed and believes that defendants BL and

1 Andrew Breitbart, beginning sometime between December 14, 2005 and
2 January 3, 2006, without the permission or consent of Gen Ads,
3 misappropriated the Original Code by reproducing it and distributing it on
4 the Breitbart Site.

5 **IV. FIRST CAUSE OF ACTION**
6 **BREACH OF CONTRACT**
7 **(By Gen Ads Against Breitbart.com, LLC)**

8 61. Plaintiffs incorporate the allegations set forth in paragraphs 1
9 through 60 above as though fully set forth herein.

10 62. On or about November 11, 2005, Gen Ads and BL entered into a
11 written agreement.

12 63. Beginning on or about November 20, 2005, and continuing
13 through the present, BL breached the agreement by, among other things,
14 selling advertising space on the Breitbart Site to Reuters to the exclusion of
15 Gen Ads and failing to make payment to Gen Ads of revenue received from
16 Reuters.

17 64. Gen Ads has performed its obligations to BL as required by the
18 Advertising Agreement, except to the extent its performance was prevented
19 or excused by the conduct of defendant BL.

20 65. By engaging in the acts alleged herein, BL has breached its
21 obligations under sections 2, 3(b), 3(e), and 6.4 of the Advertising Agreement,
22 among others.

23 66. As a direct, proximate and foreseeable result of BL's breach of the
24 Advertising Agreement, Gen Ads has been damaged in an amount to be
25 determined at trial, but which Gen Ads believes exceeds \$75,000.00.

26 67. Gen Ads is entitled to its reasonable attorney's fees pursuant to
27 section 17 of the Advertising Agreement.

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**V. SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(By Cartmell Holdings, LLC and Hillstrom Equities, LLC against all
Defendants except Breitbart.com, LLC)**

68. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 67 above as though fully set forth herein.

69. On or about September 1, 2005, Cartmell Holdings, Hillstrom Equities and Andrew Breitbart (purportedly as Breitbart Holdings, Inc.) entered into the LLC Agreement.

70. Breitbart Holdings, Inc. did not exist at the time Andrew purported to execute the LLC Agreement on its behalf, and consequently, Andrew is personally liable for BHI's failure to honor its obligations under the LLC Agreement.

71. The LLC Agreement provides Gen Ads the exclusive right to sell advertising on any web site operated by a Member or an Affiliate of a Member.

72. Beginning in or about November 2005, and continuing through the present, BHI and Andrew breached the LLC Agreement by allowing BL to sell advertising space on the Breitbart Site to Reuters, to the exclusion of Gen Ads and in derogation of Gen Ads's exclusive right to sell advertising on the Breitbart Site.

73. Cartmell Holdings and Hillstrom Equities have performed their respective obligations to Andrew and BHI as required by the LLC Agreement, except to the extent their performance was prevented or excused by the conduct of Defendants Andrew and/or BHI.

74. By engaging in the acts alleged herein, Andrew and BHI have breached their obligations under section 13.2 of the LLC Agreement.

75. As a direct, proximate and foreseeable result of Andrew's and BHI's breach of the LLC Agreement, Cartmell Holdings and Hillstrom

Equities have been damaged in amount to be determined at trial, but which each believes exceeds \$75,000.00.

76. Andrew's acts of breach, and his entry into the LLC Agreement, were done on behalf of himself and his marital community. Accordingly, Andrew Breitbart, Susannah Bean Breitbart and the Breitbart marital community are jointly and severally liable for said breach of contract and the damages caused thereby.

77. Cartmell Holdings and Hillstrom Equities are entitled to their reasonable attorney fees pursuant to section 14.2 of the LLC Agreement.

**VI. THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
(By all Plaintiffs against all Defendants except Breitbart.com, LLC)**

78. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 77 above as though fully set forth herein.

79. By virtue of their role as a Manager of Gen Ads, and as expressly acknowledged by section 3.7 of the LLC Agreement, Andrew and BHI have a fiduciary duty to Gen Ads and its Members.

80. As fiduciaries, Andrew and BHI owe Gen Ads the highest duty of good faith and loyalty.

81. Pursuant to section 13.2 of the LLC Agreement, Gen Ads has the exclusive right to sell advertising on Affiliate Properties, as that term is defined by the LLC Agreement, and Andrew and BHI are obligated to cause their Affiliate Properties to effectuate Gen Ads's exercise of that right.

82. The Breitbart Site is an Affiliate Property.

83. Andrew and BHI breached their fiduciary duty to Gen Ads by causing their Affiliate, BL, to enter into an agreement with Reuters to the exclusion of Gen Ads, in derogation of their duties and in violation of the LLC Agreement and the Advertising Agreement. By thus placing their own interests ahead of those of Gen Ads, Andrew and BHI breached their

1 fiduciary duty of loyalty.

2 84. Andrew further breached his fiduciary duty to Gen Ads by
3 causing traffic originating at <<drudgereport.com>> to link directly to
4 Reuters, for which traffic he (directly or through another defendant) received
5 consideration from Reuters. Under his fiduciary duty, Andrew was obligated
6 to cause all such traffic to be directed to the Breitbart Site, and to account to
7 Gen Ads for any revenue generated thereby.

8 85. Andrew undertook the acts alleged herein on behalf of himself
9 and his marital community. Accordingly, Andrew Breitbart, Susannah Bean
10 Breitbart and the Breitbart marital community are jointly and severally
11 liable for said breach of fiduciary duty.

12 86. As a direct, proximate and foreseeable result of Andrew's breach
13 of fiduciary duty, Plaintiffs have been damaged in amount to be determined
14 at trial, but which Plaintiffs believe exceeds \$75,000.00.

15 **VII. FOURTH CAUSE OF ACTION**
16 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
17 **(By Gen Ads Against Breitbart.com, LLC)**

18 87. Plaintiffs incorporate the allegations set forth in paragraphs 1
19 through 86 above as though fully set forth herein.

20 88. Under Washington law, there is in every contract an implied
21 covenant of good faith and fair dealing, requiring each party to cooperate with
22 the other so that he may obtain the full benefit of performance.

23 89. Defendant BL has interfered with, obstructed, and otherwise
24 undermined Gen Ads's ability to perform its obligations under the
25 Advertising Agreement.

26 90. When a visitor clicks on one of the links to Reuters that BL has
27 placed on the Breitbart site, the visitor leaves the Breitbart Site and is
28 directed to the Reuters site. As a result, that visitor generates no further
page impressions on the Breitbart Site. As a result, the visitor is prevented

1 from clicking on any advertisements on the Breitbart Site. Accordingly, by
 2 directing traffic away from the Breitbart Site to Reuters, BL reduced both the
 3 overall traffic on the Breitbart Site and the click-through rate for
 4 advertisements placed by Gen Ads, thus constraining Gen Ads's ability to
 5 obtain the full benefit of its performance under the Advertising Agreement.

6 91. In addition, BL has imposed unreasonable, arbitrary and
 7 burdensome requirements on Gen Ads's performance under the Advertising
 8 Agreement. BL's conduct is calculated to cause Gen Ads to breach the
 9 Advertising Agreement. BL's calculation is evidenced by (among other things)
 10 BL's repeatedly asserting, without justification, that Gen Ads is in breach of
 11 the Advertising Agreement for failure to comply with its unilaterally imposed,
 12 extracontractual demands.

13 92. By this conduct, BL has violated the implied covenant of good
 14 faith and fair dealing required by the Advertising Agreement

15 93. As a direct, proximate and foreseeable result of BL's breach of the
 16 implied covenant of good faith and fair dealing, Gen Ads has been damaged in
 17 amount to be determined at trial, but which Gen Ads believes exceeds
 18 \$75,000.00.

19 20 21

VIII. FIFTH CAUSE OF ACTION FRAUD

(By Plaintiffs Against Andrew Breitbart, Mrs. Breitbart, and the
Breitbart Marital Community)

22 94. Plaintiffs incorporate the allegations set forth in paragraphs 1
 23 through 93 above as though fully set forth herein.

24 95. In or about August, 2005, defendant Andrew Breitbart falsely and
 25 fraudulently represented to Gen Ads that (1) Andrew would continue to cause
 26 traffic to be directed from <<drudgereport.com>> to the Breitbart Site to the
 27 greatest extent possible; (2) Andrew would not, for consideration, cause traffic
 28 to be directed from <<drudgereport.com>> to any site other than the

1 Breitbart Site; (3) GenAds would have the ability to sell at least five (5)
2 advertising locations on the Breitbart Site; and (4) Andrew was not
3 negotiating with any third party for an advertising agreement (collectively
4 the "Representations").

5 96. At the time Andrew made the Representations to Plaintiffs Gen
6 Ads, Cartmell Holdings and Hillstrom Equities, Andrew had no intention of
7 performing them.

8 97. Indeed, at the time Andrew was negotiating the Advertising
9 Agreement and LLC Agreement, he was secretly negotiating and planning to
10 enter into an agreement with Reuters for the same purpose as the
11 Advertising Agreement.

12 98. Andrew advised Gen Ads that he was discussing with Reuters an
13 agreement to provide content for the Breitbart site and that Gen Ads would
14 benefit from such content.

15 99. By making affirmative representations about Reuters, Andrew
16 created a duty to fully disclose the nature of his communications with
17 Reuters.

18 100. Andrew hid and failed to disclose to Gen Ads, Cartmell Holdings,
19 and Hillstrom Equities his activities in connection with Reuters, and in
20 particular that he was negotiating an agreement that would divert traffic
21 away from the Breitbart Site to the Reuters web site.

22 101. By diverting traffic away from the Breitbart Site to the Reuters
23 site, the value of advertising Gen Ads was negotiating to sell for BL would be
24 materially diminished.

25 102. Had Gen Ads, Cartmell Holdings, and Hillstrom Equities known
26 that Andrew was negotiating for a deal that would divert traffic away from
27 the Breitbart site (and thereby diminish potential advertising revenue), then
28 they would not have entered into the Advertising Agreement and LLC

1 Agreement with Andrew and BL.

2 103. Additionally, Andrew hid and failed to disclose to Gen Ads,
3 Cartmell Holdings, and Hillstrom Equities that he planned to send traffic
4 from <<drudgereport.com>> to the Reuters site, which he would otherwise
5 have sent to the Breitbart Site, if his agreement with Reuters materialized.

6 104. Had Plaintiffs known of Andrew's secret intent to send traffic to
7 Reuters, to the detriment of the Breitbart Site, from <<drudgereport.com>>
8 then Plaintiffs would not have entered into the Advertising Agreement and
9 LLC Agreement.

10 105. Shortly after entering into the LLC Agreement on behalf of BL
11 and the Advertising Agreement, Breitbart actually did send traffic from
12 <<drudgereport.com>> to the Reuters site which he otherwise would have
13 sent to the Breitbart Site.

14 106. As a result of the traffic Andrew sent to the Reuters site instead
15 of to the Breitbart Site from <<drudgereport.com>>, the value of advertising
16 Gen Ads sold on the Breitbart Site diminished substantially.

17 107. At the time Andrew made the Representations and at the time
18 Gen Ads entered into the Advertising Agreements, Gen Ads was ignorant of
19 Andrew's secret intention not to perform and Gen Ads could not, in the
20 exercise of reasonable diligence, have discovered Andrew's secret intention.

21 108. At the time Andrew made the Representations and at the time
22 Cartmell Holdings and Hillstrom Equities entered into the LLC Agreement,
23 they were ignorant of Andrew's secret intention not to perform and could not,
24 in the exercise of reasonable diligence, have discovered Andrew's secret
25 intention.

26 109. In making these Representations, Andrew induced Gen Ads to,
27 and Gen Ads in fact did, enter into the Advertising Agreement with BL and
28 BHI in reliance upon the representations. Had Gen Ads known the actual

1 facts, Gen Ads would not have taken such action.

2 110. In making the Representations, Andrew induced Cartmell
3 Holdings and Hillstrom Equities to, and they in fact did, enter into the LLC
4 Agreement with BL and BHI in reliance upon the Representations. Had
5 these parties known the actual facts, they would not have taken such action.

6 111. Plaintiffs' reliance on Andrew's representations was justified
7 because Andrew controls both BHI and BL, and was in a position to fulfill his
8 promises on behalf of BL if he so desired.

9 112. In doing the acts herein alleged, Andrew acted with oppression,
10 fraud, and malice.

11 113. Plaintiffs do not wish to rescind said agreements, but rather elect
12 to enforce them and recover its damages.

13 114. Andrew undertook the acts alleged herein on behalf of himself
14 and his marital community. Accordingly, Andrew Breitbart, Susannah Bean
15 Breitbart and the Breitbart marital community are jointly and severally
16 liable for said fraud.

17 115. As a proximate result of Andrew's fraud and deceit, Gen Ads was
18 induced to enter into an the Advertising Agreement and Cartmell Holdings
19 and Hillstrom Equities were induced to enter into an the LLC Agreement by
20 reason of which Plaintiffs have been damaged in an amount to be proved at
21 trial but which Plaintiffs believe exceeds \$75,000.00.

22
23 **IX. SIXTH CAUSE OF ACTION**
COPYRIGHT INFRINGEMENT
24 **(By Gen Ads Against Breitbart.com, LLC, Andrew Breitbart, Mrs.**
Breitbart, and the Breitbart Marital Community)

25 116. Plaintiffs incorporate the allegations set forth in paragraphs 1
26 through 115 above as though fully set forth herein.

27 117. Gen Ads is, and at all relevant times has been, the copyright
28 owner under United States copyright law with respect to the Original Code,

1 which it uses to place advertisements dynamically on a Gen Ads client site,
2 such as the Breitbart Site.

3 118. The Original Code is copyrightable subject matter under the
4 Copyright Act, 17 U.S.C. § 101, *et seq.*

5 119. Gen Ads has complied in all respects with the provisions of the
6 Copyright Act and, on December 30, 2005, Gen Ads registered the copyright
7 in the Original code with the United States Copyright Office, and secured
8 Certificate of Registration No. TX 6-253-208, a copy of which is attached
9 hereto as **Exhibit C**.

10 120. Among the rights granted to Gen Ads under the Copyright Act
11 are the exclusive rights to reproduce the Original Code and to distribute the
12 Original Code to the public.

13 121. Gen Ads is informed and believes that defendants BL and
14 Andrew Breitbart, beginning sometime between December 14, 2005 and
15 January 3, 2006, without the permission or consent of Gen Ads, has used, and
16 continues to use, the Original Code to place advertisements on the Breitbart
17 Site.

18 122. In doing so, Andrew and BL violated Gen Ads's exclusive rights of
19 reproduction and distribution and has infringed Gen Ads's copyright rights.

20 123. Andrew undertook the acts alleged herein on behalf of himself
21 and his marital community. Accordingly, Andrew Breitbart, Susannah Bean
22 Breitbart and the Breitbart marital community are jointly and severally
23 liable for said copyright infringement.

24 124. As a result of the infringement by Andrew and BL of Gen Ads's
25 copyrights and exclusive rights under the United States Copyright Act, Gen
26 Ads is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
27 Andrew, BL, Mrs. Breitbart, and the Breitbart martial community. Gen Ads
28 is further entitled to its attorney's fees and costs pursuant to 17 U.S.C. § 505.

**X. SEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT
(By Gen Ads Against Breitbart.com, LLC)**

125. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 124 above as though fully set forth herein.

126. BL claims that Gen Ads is obligated to comply with unreasonable, arbitrary and burdensome requirements of performance under the Advertising Agreement, and that Gen Ads's failure to comply with such requirements constitutes a breach by Gen Ads.

127. Gen Ads denies that it is obligated to comply with the requirements unilaterally imposed by BL, and denies that it is breaching the Advertising Agreement.

128. A justiciable substantial controversy exists between BL and Gen Ads concerning their respective rights and duties under the Advertising Agreement.

129. Gen Ads and BL have an existing legal relationship and genuine rights and interests upon which this Court's judgment may effectively operate with the force and effect of a final judgment at law or decree in equity.

130. This proceeding is genuinely adversary in character between Gen Ads and BL.

131. A declaration by the Court would terminate the controversy between Gen Ads and BL.

132. The parties suffer from uncertainty and insecurity with respect to rights, status and other legal relations among them which can only be remedied by the Court.

133. This substantial controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

134. This Court has the power to declare the rights, status and other legal relations between the parties pursuant to 28 U.S.C. § 2201, et seq.

135. Gen Ads desires a judicial determination of its rights and duties under the Advertising Agreement, and a declaration that Gen Ads is not obligated to comply with the requirements imposed by BL and is not in breach of the Advertising Agreement.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants, jointly and severally, and in favor of Plaintiffs, as follows:

1. For damages in amount to be proven at trial;
2. For its attorney's fees and costs incurred herein;
3. For statutory damages for each infringement of the Original Code pursuant to 17 U.S.C. § 504;
4. For an injunction prohibiting further infringement of the Original Code pursuant to 17 U.S.C. § 502;
4. For its costs in this action;
5. For punitive and exemplary damages;
6. For a declaration that Gen Ads is not required to comply with BL's purported compliance standards, and is not in breach of the Advertising Agreement; and
7. For such other and further relief as may be just and proper.

Dated this 26th day of January, 2006.

Respectfully Submitted,

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

By:



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Attorneys for Plaintiffs